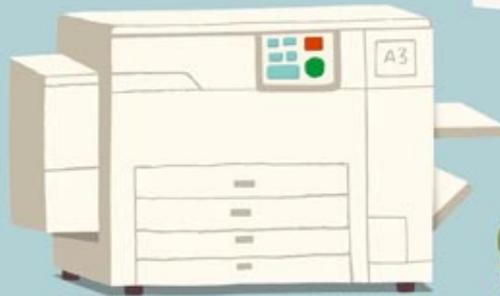


T H E

ART

O F



COPYING

A **GUIDE** TO THE INCORPORATION
OF VISUAL MATERIAL IN **REPROGRAPHIC**
LEGAL **SCHEMES** AND LICENCES

INTRODUCTION

There is a wide range of images or visual material contained within books, magazines, newspapers and journals in addition to the text. Because visual material can be photocopied and/or scanned, it follows that the right to copy visual material should be included in reprographic licences and schemes.



The Art of Copying is designed to be an informative guide for IFRRO members, both existing and new, to provide practical guidance to best practice in the incorporation of visual material in reprographic licences and legal schemes, including:

- * TYPES OF VISUAL MATERIAL AND HOW IT IS PROTECTED BY COPYRIGHT
- * METHODS OF INCORPORATING VISUAL MATERIAL IN PUBLICATIONS
- * ADVANTAGES OF INCLUDING VISUAL MATERIAL IN REPROGRAPHIC LICENCES AND SCHEMES, INCLUDING REDUCING RISK AND ADDING VALUE
- * CONSULTING VISUAL CREATORS AND INVOLVEMENT IN RRO GOVERNANCE
- * SECURING MANDATES FROM VISUAL CREATORS
- * MEASURING COPYING LEVELS, ALLOCATING SHARES OF REVENUE AND MAKING PAYMENTS NATIONALLY AND INTERNATIONALLY

This guide was developed by the IFRRO Working Group on Copying of Visual Material in consultation with the wider IFRRO membership. We would like to acknowledge the advice given and information shared by all the contributors. We are especially grateful to Hans-Petter Fuglerud (KOPINOR), Camillo Gatta (DACs), Mats Lindberg (BUS), Anke Schierholz (VG Bild-Kunst), Franziska Schulze and the IFRRO Secretariat for their support and guidance throughout the production of this publication.

International
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Reproduction
Rights
Organisations

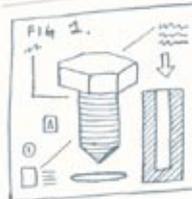
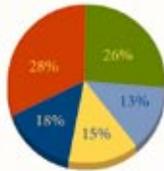
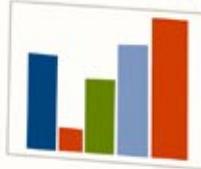
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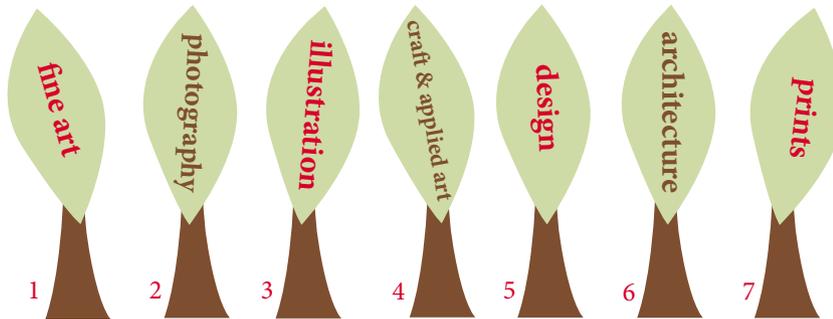
WHAT IS VISUAL MATERIAL?



WHAT IS VISUAL MATERIAL?

1.1 DIFFERENT TYPES OF VISUAL MATERIAL

Visual art can take many forms, including



1. painting, drawing, collages, sculpture, installations
2. including fine art, documentary, news & reportage, and snapshots
3. cartoons, diagrams, maps & charts
4. jewellery, ceramics, glass, furniture
5. graphic design, as well as product design
7. engravings, woodcuts and screen prints

In the context of reprography, all these forms of art are referred to as “visual material”.

1.2 COPYRIGHT IN VISUAL MATERIAL

Visual material is protected by copyright. The common principles of copyright protection are enshrined in the Berne Convention for the Protection of Literary and Artistic Works 1886 (as amended) and generally protect the work during the lifetime of its creator and for a period after his or her death. However, the legal framework for copyright and the definitions of visual material may differ from country to country.

Although definitions and methods of protection sometimes vary, the common goal of national copyright laws is to give creators the right to control the use of their works and to benefit from payment for such uses.

Most countries do provide some statutory exceptions in the law which allow certain uses without prior permission and/or payment. Generally however, permission must be obtained from the owners of the copyright in visual material in order that visual material can be reproduced and/or communicated to the public.

HOW VISUAL MATERIAL IS INCORPORATED IN PUBLICATIONS

Visual material is extensively reproduced in books, magazines, journals and newspapers, and generally appears in these publications via one of four routes:

2.1 COPYRIGHT LICENSING

Copyright licences (or contracts) are commonly used to grant permission to reproduce visual material in publications. The rights licensed vary according to the circumstances. For example, a licence to incorporate photographs in a magazine includes the right to reproduce the works on certain pages and distribute (or sell) copies of the magazine containing those reproductions.

Copyright licences can be granted by the creator (or owner) of the copyright in visual material or his/her agent. Often, such agents are collecting societies which negotiate and sell licences on behalf of the creators they represent. Alternatively, model agreements produced by trade associations can provide guidance to individual creators.

The licences offered by collecting societies and/or visual creators enable publishers to carry out all the relevant acts necessary for the inclusion of visual material in publications, but do not normally include a grant of rights for reprographic copying. Consequently, visual creators are entitled to receive their remuneration for such uses separately.

2.2 COMMISSIONING

Sometimes publishers prefer to commission a creator to produce an original work to include in a publication. For example, the illustrations in children's books are often commissioned. In some countries, the visual creator is the legitimate copyright owner unless there are specific contractual arrangements to the contrary, whereas in other countries the rights in the commissioned work belong to the commissioner rather than the artist. In the absence of specific contractual arrangements or clear provisions of the law, the visual creator is entitled to receive their remuneration for reprographic uses concerning the commissioned artistic works.

2.3 ASSIGNMENT OR BUY-OUT

Sometimes publishers purchase rights from creators outright in preference to buying a copyright licence or a commission agreement. In such circumstances, the publisher might become the owner of some or all rights in the visual material which is assigned. Creators and their agents generally discourage assignments because licences or commission agreements are usually sufficient to enable publishers to carry out their activities, without preventing visual creators from earning income from the future exploitation of their creations through an assignment.

Assignments or buy-outs are rare for some visual material, such as works of fine art, because their creation is independent from the publishing projects and their inclusion in books, journals and newspapers is normally subject to the grant of a licence by either the individual artist or the mandated collecting society for the visual arts.





2.4 LEGAL LIMITATIONS AND/OR EXCEPTIONS

In certain circumstances, visual material can be incorporated in publications without permission of the creator because of limitations and/or exceptions recognised by the law. However, it does not follow that because such acts of primary reproduction are allowed by the law reprographic copying will benefit from the same exceptions or limitations. Therefore, visual creators remain entitled to their remuneration for such secondary uses.

Even when rights are assigned or bought out, particular care needs to be given to determining whether or not reprographic rights are included in the grant of rights. Apart from those cases in which it is conclusive, the inclusion of visual material in a publication (be it through a copyright licence or by virtue of legal limitations and/or exceptions) does not include a grant of rights in respect of reprographic copying and a mandate will have to be obtained by the RRO from the individual rights holders (or organisations representing them).

WHY VISUAL MATERIAL IS IMPORTANT FOR RROS



3.1 A COMPREHENSIVE LICENCE

Reprographic licences and schemes are designed to provide users with easy to use, convenient solutions which enable them to photocopy and/or scan pages of books, magazines and newspapers legally. An RRO licence will therefore be expected to cover a broad range of different publications; the broader the range of relevant material an RRO can offer in its licence, the more attractive it will be for the user.

Visual material is relevant for RROs when it forms any part of a publication that can be photocopied, scanned or used in another way which is permitted by an RRO licence. Certain publications are visual material-intensive, others are less so, but the widespread presence of visual material in books, periodicals, newspapers, magazines and journals makes it imperative for RROs to be in a

position to license the copying of visual material since it forms part of the content of publications.

Copying the visual material that appears within publications generally requires permission (unless a statutory exception applies which is, however, often still subject to a right to be remunerated for the use). Without permission to copy visual material, the user would be obliged to avoid copying visual works by, for example, masking out the visual work each time he wanted to photocopy a page. Clearly, this is inconvenient and difficult, if not impossible, to enforce.

In order to deliver a comprehensive and valuable service to users, RROs need to ensure their schemes and licences include permission to copy visual material from the widest possible range of sources.

3.2 REDUCING RISK

In developing a reprographic licence, it is rare for an RRO to secure 100% of the mandates (or permissions) required. This is why RROs typically provide users with an indemnity which effectively protects the user against any civil legal action for copyright infringement from a creator and/or publisher who might not have specifically mandated the RRO to license.

Such indemnification covers any damages that would be awarded in an infringement claim, plus costs. If the RRO offers an indemnity clause, it can lower its risk of having to pay out on it by securing mandates from creators of visual material. It would be unwise to use an indemnity clause for visual material if the RRO does not have any mandates from the creators and owners of this type of content.

Where an RRO operates under a system which provides users with enhanced coverage regarding the works they can use, whether in the form of a legal licence or an extended collective licence, the enhanced coverage is likely to include all types of material required for the use including visual material. In the case of extended collective licences, it is essential that a substantial proportion of repertoire is represented.

3.3 ADDING VALUE

Licence holders and users of reprographic schemes want to copy visual material. What is more, the demand for visual material increases significantly when copying using digital tools is permitted because the quality of the copy that can be achieved is so much greater. Therefore, if the RRO is able to secure the necessary mandates to include the right to copy visual material, value can be added to the licence or scheme.

The inclusion of visual material in reprographic licences offers a marketing advantage to RROs, making their licences more attractive to users, and at the same time enabling visual creators to receive fair remuneration.





HOW CAN AN RRO INCLUDE VISUAL MATERIAL IN ITS LICENCE?

4.1 OBTAINING MANDATES

There are several ways for an RRO to effectively secure permission to include visual material in its licences. To an extent, the choices available will depend on the structure of the RRO and the legal environment.

However, it is most likely that the RRO will need to secure one or more mandates from creators of visual material and/or their representatives in order to incorporate visual material into the reprographic scheme or licence.

A mandate can be secured from ...

- Collecting societies representing visual creators
- Individual creators/rights holders
- Trade associations and/or professional interest groups that have a role in the management of their members' rights
- A combination of the above

The key considerations for an RRO contemplating how to secure a mandate are ...

- * Does the individual and/or organisation offering the mandate own and/or control the relevant rights in the visual material in question?
- * Is the widest possible range of visual material covered by the mandate(s)? For example, a mandate in respect of only fine art would not be sufficient to cover the other types of visual material which appear in publications and are available to be copied, such as photography and illustration.

An RRO would therefore need to collect sufficient mandates from individuals and/or organisations to ensure comprehensive cover. An alternative would be to ensure that an organisation claiming to represent visual creators (such as a collecting society) is sufficiently representative of visual creators to offer an indemnity to cover all visual material.

- * If the mandate is being offered by an organisation, is that organisation capable of effectively distributing any revenue allocated by the RRO for visual material to all the visual creators entitled to a share?

If it is proving difficult to secure mandates, RROs should set aside a portion of licensing revenue as a matter of routine to hold in reserve for visual creators in the event that a claim is made in the future and/or a mandate is secured.



4.2 ALTERNATIVE MODELS

Some RROs operate under models which might not require a mandate from every single rights holder. These include compulsory schemes, legal licences and licences benefiting from extended effects under legislation, as well as combinations of these. Although the inclusion of visual material in the RRO's licence might not require the direct mandate of the rights holders, other forms of cooperation are usually prescribed by the national laws.

COMPULSORY COLLECTIVE MANAGEMENT

In some countries copyright owners are not allowed to license reprographic reproduction rights on an individual basis. The law creates a system of so-called compulsory collective management, whereby the right to license and collect licence fees is automatically transferred to the national RRO which operates on behalf of all rights holders. In this case, the involvement of all rights holders (including visual creators) is defined in the terms and conditions of the licence and is not dependent on a mandate. France is an example of a country operating a system of compulsory collective management.

EXTENDED COLLECTIVE LICENSING

Under an extended collective licence system, the law provides that local collecting societies capable of representing a substantial number of relevant rights holders (publishers, writers and visual creators) are also entitled to offer licences to users on behalf of non-represented rights holders, thus effectively extending their membership both to national non-mandating rights holders and international rights holders. This system is operated in Norway, Denmark, Sweden and in other Nordic countries.

LEGAL LICENCES

In other countries the law grants a licence to users in respect of reprographic reproductions rights and the involvement of the national RRO is restricted to the collection of remuneration and distribution of the shares of licence fees to rights holders. In this arrangement, visual creators and other rights holders are not in a position to refuse a licence to users but have a legal entitlement to be fairly remunerated. Countries such as Germany and Australia operate legal licences.

Whichever model the RRO uses or is obliged to use, cooperation and consultation with all relevant stakeholders is recommended good practice.

4.3 INVOLVING VISUAL CREATORS IN THE GOVERNANCE OF THE RRO

The governance of RROs assumes different forms depending on relevant legislation, the way the organisation is constituted and the objectives of the organisation. Whatever the system may be, it is good practice to involve all relevant stakeholders including writers, publishers and visual creators, in the governance of RROs. This will ensure that all stakeholders are able to contribute to the work of the RRO and ensure their interests are properly managed. It is also the most effective way for RROs to ensure the relevant expertise is available so that consultation can be achieved quickly when new licences and services are developed.

This requirement is reinforced in IFRRO's Code of Conduct, and IFRRO Statutes and Guidance on full RRO membership of IFRRO.

4.4 WHAT KINDS OF ORGANISATIONS EXIST FOR VISUAL CREATORS AND WHAT DO THEY DO?

Visual creators are often members of collecting societies, trade associations, and professional groups. These groups typically offer a range of services to visual creators, including professional advice, promotional opportunities and copyright licensing services.

Such organisations are often active globally, belonging to international umbrella organisations in addition to IFRRO, such as:

- * International Federation of Societies of Authors and Composers (CISAC)
- * European Visual Artists (EVA)
- * International Council of Graphic Design Associations (ICOGRADA)
- * International Federation of Journalists (IFJ)
- * Pyramide

Some creators of visual material manage their interests individually.



4.5 WHAT TO DO IF VISUAL CREATORS ARE NOT ORGANISED

In some countries visual creators may not be organised into groups or represented by collecting societies. In this situation, the RRO will need to obtain mandates from national visual creators individually. International rights for the reprographic reproduction of visual material can form part of bilateral agreements between RROs.

RROs and/or their stakeholders, providing they have the necessary resources and experience, could contribute to the creation and setting-up of an organisation representing visual creators with the purpose of managing the administration of reprographic rights.

Raising awareness amongst visual creators of the opportunity to participate in and benefit from a reprographic licensing scheme will require the RRO to explain the purpose of its licences and its policies clearly and extensively. Sensitising campaigns and events particularly geared towards visual creators are a good way of doing this, as well as encouraging word

of mouth via existing networks. Cooperation with other existing organisations such as trade associations for freelance visual creators can also be valuable.

In the absence of a local organisation representing visual creators, a national RRO can rely on the help and support of the international network of visual artists societies, which are in a position to mandate the national RRO directly in respect of their domestic repertoires. This can provide a useful first step towards incorporating a wide range of visual material in the licence.

At the time of writing, IFRRO and EVA are coordinating their development programmes, in order to help emerging RROs in countries in which visual creators are not organised.

Some options for encouraging the participation of visual creators in the work of RROs might include:

❖ direct advertising in arts-industry press

❖ seminars and workshops in places that visual creators gather

❖ networking through publishers that commission and/or license visual material

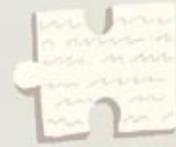
❖ links to the RRO website

❖ encouraging artists to inform their peers

❖ seeking advice from other IFRRO members with established relationships with visual creators

Collecting individual mandates can be time-consuming and may not result in a sufficiently representative mandate to support the reprographic licence, at least not initially. An RRO may not always find it easy to stimulate the interest of visual creators, particularly if the reprographic licence or scheme is new. Once a scheme has been operational for a while, it should be easier to demonstrate the positive benefits to creators and encourage them to mandate their RRO.

LICENCE



CONSULTING VISUAL CREATORS

5.1 THE IMPORTANCE OF CONSULTATION

The scope of the mandate the RRO is able to secure from each of its participant stakeholders defines the limits of the licence that can be offered to users. It is essential that mandates secured in respect of visual material serve the requirements of the user of the licensing scheme. However, the RRO must also consider the viewpoint of visual creators who, in common with other participants in reprographic schemes, usually wish to create some limits to the extent of uses that can be made of their work. The key to understanding the concerns of visual creators is consultation.

Legal licences usually define what a user must be permitted to do with copyright material and the RRO cannot offer less than this. The RRO may license beyond the legal requirements if mandates permit. The key in understanding what is possible beyond the legal requirements is consultation.

5.2 COMMON CONCERNS

As a general rule, visual creators are happy to permit photocopies to be made of their works which appear in publications. A photocopy does not damage the integrity of the work that is copied and because the quality of such a copy is relatively poor, it cannot substitute or be mistaken for the original art work. As such, it is unlikely that the creator's ability to earn a living through sales and/or commissions will be affected by photocopying.

However, this situation changes significantly when scanning or copying through digital means is permitted. Research shows that

copying of visual material increases significantly when it can be done digitally. Digital copying offers the user a much better quality copy and provides numerous options for manipulation and storing the copy. These advantages pose opportunities as well as obvious risks for creators of visual material.

One clear requirement of creators and owners of the rights in visual material is that RRO licences supplement but do not substitute the primary uses of the work. For example, the RRO licence should not compete with the sale of a licence to reproduce visual material into a publication or the commissioning of a new work.

CREATORS OF VISUAL MATERIAL ARE USUALLY ABLE TO PROVIDE A MANDATE TO RROS FOR ...

- * Photocopying
- * Preparing slides, acetates and Power Point presentations
- * Scanning
- * Downloading
- * Printing out
- * Production of educational course packs

THE MANDATE WILL TYPICALLY EXPRESSLY PROHIBIT THE FOLLOWING ...

- * Adapting, manipulating or altering a work
- * Using a copy to substitute for an original art work
- * Substituting commissioning of an original work or a licence of a primary reproduction
- * Further commercial uses beyond the scope of the licence

Provided these requirements are respected, visual material can be included in most, if not all, RRO licences.



GATHERING DATA AND MAKING PAYMENT

6.1 MEASURING COPYING LEVELS OF VISUAL MATERIAL

RROs usually gather data to help determine copying levels and trends. Methods typically used to assess copying of visual material include ...

- ❖ Sample surveying of actual copies made of pages containing visual material
- ❖ Interviewing users about their copying habits
- ❖ Monitoring the publications the user has available to copy
- ❖ Measuring how much space on a page is occupied by visual material



This information can be essential to helping RROs determine licensing tariffs and allocate shares of the licence revenue. In respect of visual material, some RROs also analyse ...

- ❖ What types of visual material are copied by category (photography, illustration, fine art etc)
- ❖ Frequency and/or extent to which visual material is copied

This additional information can be useful to help determine the share of the licence fee that visual creators can expect to receive. If evidence of actual copying is not available or reliable, assessing what visual material is reproduced in publications - and could therefore be copied - is a valid alternative method.

Close cooperation with visual creators (and/or their representatives) is fundamental when identifying and designing an appropriate method of data collection, especially when trying to detect the extent which visual material is used.

RROs generally employ one, or a combination of these methodologies to measure copying levels. Individual RROs can be consulted for more details of how they collect data on visual material. The Working Group on Copying of Visual Material also provides a forum for IFRRO members to examine issues such as this in more depth and exchange information on merits and short comings of the various methods. The Working Group currently meets twice a year and membership is open to all IFRRO members.

A system of identifiers such as the Digital Object Identifier or the International Standard Text Codes is currently under development and, if extended to visual material, could provide a useful additional tool for RROs in accurately identifying what has been copied.

6.2 METHODS OF PAYMENT

Licence fees, or royalties, are collected by the RRO and distributed amongst the owners of the rights in the material which is copied, such as publishers, writers and creators of visual material.

The core principle is that royalties should be distributed in accordance with the mandate. A fair share of revenue should be allocated to all stakeholders, and the amount allocated should reflect the extent to which their works are copied and/or likely to be copied.

RROs take various different approaches to allocating payment for visual material. Sometimes payment

is directly related to the volume of visual material that is copied and the extent to which various categories of visual material are copied. If such information is not available, a percentage of the overall sum collected is allocated to visual material which is then distributed in individual or collective payments. The key to determining how to pay visual creators is consultation; in some cases, it is desirable to pay the total sum to an appointed representative(s) such as a collecting society for onward distribution whereas in others it is more practical to make individual payments to visual creators.



PAYMENT LEVELS HAVE BEEN SURVEYED BY THE WORKING GROUP ON COPYING OF VISUAL MATERIAL OVER THE PERIOD 2002 – 2005:

❖ In 2005, RROs allocated an average of 15% of reprographic revenues collected to visual material

❖ Generally, allocations for visual material have increased slightly year on year (in 2004, the average allocation was 13%)

❖ Several organisations reported a significant increase in copying visual material when scanning and other forms of digital copying are permitted which increased the share of revenues allocated to visual material

6.3 RECIPIENTS OF THE MONEY

In terms of distribution methodology, the approaches vary between the following ..



Collecting societies for the visual arts are often in a good position to distribute the share of reprographic licence fees allocated to visual material due to their involvement and expertise in the licensing of primary reproductions, the large number of rights holders mandating them, their close relationship with visual creators, and their ability to determine with precision the remuneration owed to the various individual visual creators.

In the event that visual creators specifically request that payment be made via a publisher(s), it is good practice to monitor the situation to ensure that the intended recipients are paid. The RRO could, for example, require an intermediary to sign a warranty and indemnity to that effect.



6.4 INTERNATIONAL PAYMENTS

A proportion of the licence fees or royalties collected by RROs is generally distributed internationally. International payments can be made in several ways and, independently of the mechanism adopted, the key principle is that the appropriate share of licence revenues for visual material reaches the relevant rights holders.

As far as the methods of international payment are concerned, RROs can pay visual creators in other countries either via a representative (such as a collecting society) or directly. Many collecting societies have a large number of domestic and foreign mandates so by paying a collecting society a large number of visual creators can be reached at once. Alternatively, RROs may have reciprocal agreements with RROs in other countries that allow each to license the repertoire of the other and make international payments accordingly (whether on the basis of A or B type bilaterals). The best approach is for RROs to consult visual creators about their preferences.





SUMMARY & FURTHER INFORMATION

Visual material is present in all types of publications and is copied by users of reprographic schemes. RROs need to offer the right to copy visual material in order to offer a comprehensive licence to their users. It is usually essential to secure the necessary permissions or mandates from visual creators in order to do this. There are a number of methods available to measure copying of visual material so that a share of the licence revenue can be allocated to visual material. Consultation of visual creators and their representatives is key.

RROs have the difficult task of translating the legal rights of creators into licensing arrangements which users will find fairly priced, easy to

administer, and flexible enough to evolve with changing technologies. It is not an easy thing to do, but the best RROs build and maintain positive relationships with the diversity of their customers and achieve a balance between the interests of their stakeholders, including visual creators, offering access to creativity to the former, while securing as a result very welcome revenue for the latter.

Reprographic licensing provides an effective solution for all. Through reprographic licences and schemes, creators of visual material can ensure that copying of their works is controlled and fairly remunerated whilst users can have access to the content they want to copy.

More information about copying visual material, reprographic rights and RROs in general is available in the following IFRRO publications:

COPYING VISUAL MATERIAL

Summary of Responses Made by RROs to Questions about Copying of Visual Material

IFRRO Working Group on Copying of Visual Material 2005

Report

IFRRO Working Group on Copying of Visual Material 1997

HOW RROS OPERATE

How to establish an RRO

IFRRO 2006

Distribution of Remuneration

IFRRO 1998

RROs and IFRRO

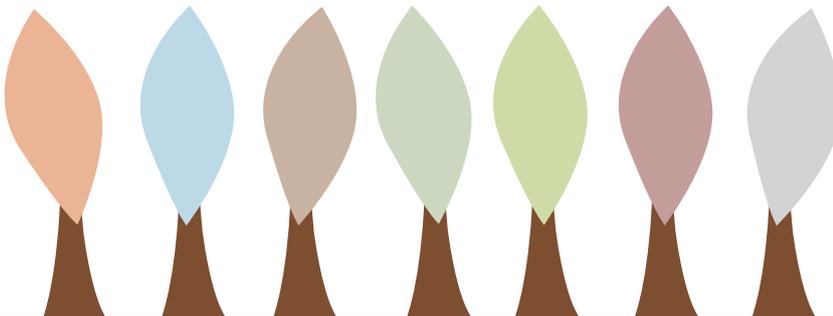
IFRRO 1997

Reprographic Reproduction

IFRRO 1997

Emergent RROs

IFRRO 1997



OTHER USEFUL PUBLICATIONS

From Artist to Audience

WIPO/IFRRO/CISAC 2004

Collective Management in Reprography

IFRRO/WIPO

Some of these publications are publicly available on the IFRRO website www.ifrro.org. All publications are available to IFRRO members either via the IFRRO intranet or by contacting the IFRRO Secretariat and requesting a copy.

USEFUL WEBSITES INCLUDE

- APEG www.apecsec.org.sg
- ARIPO www.aripo.org
- CERLALC www.cerlalc.rog
- CISAC www.cisac.org
- European Commission / Internal Market / Copyright and Neighbouring Rights www.ec.europa.eu/internal_market/copyright/index_en.htm
- EVA www.europeanvisualartists.org
- ICOGRADA www.icograda.org
- GESAC www.gesac.org

IFRRO Working Group on Copying of Visual Material

November 2006

